

The 27th April, 1985

No. 9/5/84-6Lab/3123.—In pursuance of the provisions of section 17 of Industrial Disputes Act (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Auto Lamp Limited, 21, Faridabad, N.I.T. :—

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 314/1981

between

SHRI ASHOK KUMAR, WORKMAN AND THE MANAGEMENT OF M/S AUTO LAMPS LIMITED,
21-FARIDABAD, N.I.T.

Present:—

Shri M.K. Bhandari for the workman.

Shri R. Gogna for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, the Governor of Haryana referred the following dispute between Shri Ashok Kumar and the Management of M/s Auto Lamps Limited, 21-Faridabad, N.I.T. to this Tribunal, for adjudication:—

Whether the termination of service of Shri Ashok Kumar was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim-statement, dated 22nd October, 1981, alleged that he was appointed by the respondent-management on 17th August, 1977 to do the job of Vacuum Mounting at the salary of Rs. 300 per month and was drawing Rs. 515 per month at the time of termination of his service. It was then alleged that no criteria for standard production was fixed and he produced 2,300 pieces per day according to his normal capacity but on 5th March, 1981 he was given a letter regarding less production and was removed from the factory premises. It was further alleged that he lodged a complaint to the Labour Inspector, as a result of which he was taken back on duty and he increased his production to 2,350 pieces per day and worked there for some days. It was then alleged that on 2nd April, 1981, he reported for duty when he was mercilessly beaten by the bad characters patronised by the respondent-management and was forcibly dragged out of the factory premises and that chargesheet-cum-suspension letter was served on him as well as Mr. Chander Parkash, but Mr. Chander Parkash was allowed to join duty. It was further alleged that domestic enquiry was held against him, in which he demanded certain facilities which were not given to him and domestic enquiry was just a mere formality and that in pursuance of the findings given in the said enquiry, the letter of dismissal was given to him on 4th July, 1981. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The respondent-management filed the written statement on 9th December, 1981 while the amended written statement on 14th August, 1984. It was pleaded *inter alia* that the present dispute was not covered under the provisions of Section-2A of the Industrial Disputes Act, 1947 and that the Industrial Tribunal had no jurisdiction in the matter and further that the claimant was gainfully employed. It was denied that there was no criteria for production or that the claimant was producing 2,300 pieces per day. It was admitted that the claimant had lodged a complaint, but as a result of discussion before the Labour Inspector, the workman came on duty again with clear cut terms in writing that he would increase production from previous target, of 2,300 pieces per day, but he did not produce even 2,300 pieces per day. It was then pleaded that a chargesheet-cum-suspension letter dated 2nd April, 1981 was served on the claimant as well as another workman, namely, Shri Chander Parkash with whom the claimant had fought for the reasons unconnected with the working of the factory. It was denied that the workman had been beaten by any person patronised by the Management. It was pleaded that a regular and proper enquiry was conducted and on receipt of the finding of the Enquiry Officer, the workman was dismissed on 4th July, 1981. It was denied that the requisite facilities were not given to the claimant. It was further pleaded that if the claimant was ready to wind up his business, the management on account of acute dearth of experienced workers was still ready to accommodate him at his last drawn wages subject to the condition that he promised to give the production of about 3,000 pieces a day, like other workers. It was further pleaded that if the enquiry was set aside then the management be allowed to lead additional evidence to justify the action against the claimant.

4. The claimant in his replication, dated 31st December, 1981 reiterated the pleas taken in the claim-statement.

5. On the pleadings of the parties, the following issues were framed on 23rd April, 1982, 29th May, 1982 and 22nd August, 1984 :—

- (1) Whether the reference is bad on account of preliminary objection in the written statement, i.e., whether the present dispute is not covered under Section 2-A of the Industrial Disputes Act, 1947? OPM
- (2) Whether this Court has no jurisdiction? OPM
- (3) Whether the claimant is gainfully employed? OPM
- (4) Whether the domestic enquiry was fair and proper? OPM
- (5) Whether the termination of service of Shri Ashok Kumar was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the management has examined one witness and documents, Ex. M-1 to M-21, have been tendered into evidence. The workman has appeared in the witness-box and also examined one witness and has tendered into evidence documents Ex. W-1 to W-19. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1 :

7. The question whether the termination of service of Shri Ashok Kumar was justified and in orders matter which is covered under Section 2-A of the Industrial Disputes Act, 1947 because it is laid down in this Section that the dismissal etc. of an individual workman is to be deemed to be an industrial dispute. The issue is decided accordingly against the management.

Issue No. 2 :

8. The Industrial Tribunal has jurisdiction to decide the dispute of the present type. The issue is decided accordingly against the management.

Issue No. 3 :

9. No evidence has been led by the management on this issue and as such, this issue is decided accordingly against the Management.

Issue No. 4 :

10. The management has examined Shri R. Gogna, Enquiry Officer who stated that he was appointed as Enquiry Officer,—vide letter Ex. M-1 and that the claimant was given full opportunity in the domestic enquiry. He further stated that the claimant cross-examined the witnesses produced by the Management and produced his witness as well and that Ex. M-2 contained day to day proceedings of the enquiry, copies of which were given to the claimant. He further stated that the documents Ex. M-3 to M-20, were filed by the Management in the Enquiry and that Ex. M-21 was the enquiry report submitted by him in which he found the claimant guilty.

11. Shri Ashok Kumar claimant examined himself as WW-1 and deposed that he was employed by the respondent on 16th/17th August, 1977 and was drawing Rs. 510 per month, when his services were terminated. He then stated that he used to connect the coils of the bulbs which was called 'mounting'. He then stated that no minimum production was fixed, but he used to give the production of 1,700/1,800 pieces per day, when he joined service and that there was no Union at that time. He also stated that no settlement took place between the management and the workmen regarding norm of production, but he was asked by the Management to give more production. He started giving production of 2,300 pieces per day. He stated that he was asked to give production of 2,600/3,000 pieces per day failing which he would be turned out and was then asked to leave the job or to do some other work in the factory. He further stated that he was given the job of cleaning of bulbs with acid, which he could not do, and his services were terminated and a settlement was arrived at in conciliation proceedings. He further stated that he started doing the work in the factory and his daily production was 2,350 pieces but on one day he was called and gave beating in the office to leave the job, failing which he would be killed. He further stated that he had no dispute with Shri Chander Parkash and that he had received the charge-sheet, but in the domestic enquiry documents were not supplied to him and he was not permitted to be represented through a representative in spite of requests made by him. He further stated that he wrote the letters, copies of which were Ex. W-1 to W-11 in that respect to the various authorities and that Ex. W-12 to W-16 were the postal receipt. Ex. W-17 to W-19 are the warning letters written to WW-2 Shri Ranbir Singh, in which he was asked to give production of 2,500 pieces per day. WW-2 Shri Ranbir Singh stated that he knew the claimant because he had also worked in the respondent factory and appeared as witness in the enquiry held against the claimant. He further stated that the management had asked him not to appear on behalf of the claimant and that

his statement had not been recorded properly. He further stated that his department was changed by the Management, merely because he appeared as witness from the side of the claimant and was asked to work in the Washing Department. He further stated that no quota for mounting was fixed and that no settlement had taken place in that respect and further that the claimant had no quarrel with any workman.

12. Ex. M-8 is the copy of the charge-sheet, in which it was alleged that the claimant and Chander Parkash physically fought with each other in the production hall at about 10.20 a.m. and they were separated only after great efforts by their co-workers and further that on the intervention of Shri Shiv Lal, Supervisor, they continued grappling with and threatening each other. It was further alleged that claimant resorted to slow down acts and instigating other workers to do the same in order to teach a lesson to the management. Ex. M-2 contains the day to day proceedings of the domestic enquiry, which was held by MW-1 Shri R. Gogna. These enquiry proceedings show that the management examined 8 witnesses who were cross-examined by the claimant while the claimant examined himself and one more witness. The enquiry report Ex. M-21 shows that the charges against the claimant stood proved to the effect that he had abused and physically fought with Shri Chander Parkash in the factory premises. This finding is based on the testimony of Shri Charan Singh, Shri Jain Singh and Shri Chander Parkash who appeared in the domestic enquiry and repeated the version mentioned in the charge-sheet. The enquiry report further shows that the charge to the effect that in spite of intervention of Shri Shiv Lal, Supervisor, he did not stop grappling and threatening Shri Chander Parkash was not proved. This report further shows that the charge against the claimant to the effect that he gave less production was proved on the testimony of Shri Dixit, and Shri S.C. Khera as well as documents produced before the Enquiry Officer. The report further shows that the charge to the effect that the workman instigated the other workers to resort to slow down tactics was also proved as per testimony of Shri V.S. Dixit, Shri S.C. Khera, Shri Kalika Parshad, and Shri Rajinder Jha as well as documentary evidence produced in the enquiry proceedings. The Enquiry Officer, therefore, based his findings on the basis of the evidence led before him. The plea of WW-1 Shri Ashok Kumar claimant and WW-2 Shri Ranbir Singh to the effect that no proper enquiry was held against the claimant cannot be accepted because the testimony of MW-1 Shri R. Gogna, Enquiry Officer goes to show that full opportunity was given by him to both the sides to adduce their evidence and there is no cogent ground to differ with the findings given by the Enquiry Officer which are based on the evidence of the witnesses as already been mentioned above.

13. It was argued by the representative of the workman that the claimant was not given full opportunity to cross-examine the witnesses produced by the Management. As already mentioned above, all the 8 witnesses produced by the management were cross-examined by the claimant. The argument, therefore, is without any force.

14. It was further argued that the claimant was not allowed to be represented through a representative. The document Ex. M-2 shows that on 11th June, 1981, the claimant stated that he did not wish to be represented through a representative even though he was asked by the Enquiry Officer to bring any co-workman as his representative. The proceedings, dated 11th June, 1981 bear the signatures of the claimant as well. As such, the claimant did not avail of the opportunity to bring his representative.

15. It was also argued that the copies of the documents were not given to the claimant, who had written number of letters Ex. W-1 to W-11. The proceedings of the enquiry Ex. M-2 go to show that on 3rd June, 1981, the Management was directed to consider all the documents made by the claimant in his letters for providing facilities to him. This document further shows that on 18th June, 1981, the copy of the document was given to the claimant by the Management. Consequently, the plea that the Enquiry Officer did not pay any heed to the requests made by the claimant cannot be accepted.

16. It may be mentioned that the representative of the workman placed reliance on the ruling reported in *State of Uttar Pradesh and Mohd. Sharif (dead) through L. Rs., 1982-II-LLJ-180*, in which it is laid down that where there was failure to mention particulars of date and time of alleged misconduct and certain other particulars in the charge-sheet, it amounted to denial of the reasonable opportunity to defend enquiry. The ruling is distinguishable on facts because in the present case all the material particulars were given in the charge-sheet Ex. M-8. The 2nd ruling is *The Board of Trustees of the Port of Bombay and Dilipkumar Raghavendranath Nadkarni and others, 1983-I-LLJ-I*, in which it is laid down that the rules do not inhibit the employee to be represented by a legal practitioner. That Ruling was given under the provisions of Port Trust Employees Regulation, 1976. The ruling is distinguishable on facts because in the present case, only a co-workman can be allowed to represent the claimant in the enquiry according to the clause 28 of the Certified Standing Orders applicable to the respondent factory and this facility was not availed of by the workman because on 11th June, 1981, he stated that he did not wish to bring any representative as mentioned in the enquiry proceedings Ex. M-2. The third ruling is *Tripathi, K.L. and State Bank of India & Ors., 1984-I-LLJ--2*, in which it is laid down that where the evidence was not recorded in the presence of the delinquent employee, principles of natural justice were violated. This ruling is distinguishable on facts because in the present case, the enquiry proceeding were held in the presence of the claimant throughout. The 4th ruling is *Bhagat Ram and State of Himachal Pradesh and others, 1983-II-LLJ-I*, in which it is laid down that the Government servant may present his case with the assistance of

any Government servant approved by the Disciplinary Authority but may not engage a legal practitioner or unless Disciplinary Authority having regard to the case so permit. This ruling was given under the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965 which are not applicable to the facts of the present case and is thus distinguishable on facts.

17. The representative of the management placed reliance on the ruling reported as **Sheo Sampat Lal V. State of U.P. and others**, 1983-Lab. I.C. 324, in which it is laid down that finding of fact based on appreciation of evidence and surrounding circumstances cannot be interfered with. The second ruling is **Union of India and Varma (T.R.)**, 1958 II-LLJ page 259, in which it is laid down that the law requires that the Tribunal should observe the rules of natural justice in the conduct of enquiry. The 3rd ruling is **Bennett Coleman & Co. Ltd. and M. Valladares and others**, 1955-II-LLJ-548, in which it is laid down that an act would be an act of misconduct for which an employer may punish an employee by dismissal or otherwise even if it occurs outside the working hours or outside the factory, if the act has a material bearing on the smooth and efficient working of the concern. The 5th ruling is **Pure Drinks (Private) Ltd., and Kirat Singh Maungatt and another**, 1961-II-LLJ page 99, in which it is laid down that if a proper charge has been framed and proper enquiry has been held by the employer, the Industrial Tribunal can interfere with the findings or conclusions reached by the Enquiry Officer at the domestic enquiry, if for instance, the conclusion is perverse and is not supported by any evidence. The 6th ruling is **Ranjit Kr. Bosu Roy Petitioner V. Administrator, Cooch Behar Municipality and others**, 1983 Lab-I.C.NOC 91 (CAL), in which it is laid down that the principles of natural justice must be observed while holding the departmental enquiry. The 7th ruling is **Notified Area Committee, Mohindergarh Appellant V. Mahavir Parshad**, 1984-Lab.I. 464, in which it is laid down that second show-cause notice before imposition of punishment is not necessary. The 8th ruling is **Dwarka Prasad-Chuni Lal Gupta and the State of Maharashtra**, 1984 (Vol. 48) Indian Factories and Labour Reports-5, in which it is laid down that normally the findings recorded in the departmental enquiry are not interfered with by the Court even if on the basis of same evidence, the Court can come to a different conclusion. The 9th ruling is **Glaxi Laboratories (I) Limited and Labour Court, Meerut and others**, 1984-I-LLJ-16, in which it is laid down that the Certified Standing Orders have more or less a statutory flavour. The 10th ruling is **M.C. Raju and Executive Director**, 1985-I-LLJ page 210, in which it is laid down that the reference to the Standing Orders as finally certified under the Industrial Employment Standing Orders Act, 1946 in Section 12/A is obviously to the first Standing Orders made for the establishment after the Act came into force. The 11th ruling is **Shrinivas Krishna Surve Petitioner V. Bombay Municipal Corporation and others**, 1984-Lab. I.C. 1277, in which it is laid down that the Labour Court could not sit as a Court of Appeal and interfere with a finding arrived at by a domestic Tribunal merely because the Labour Court took a different view of the evidence led before the domestic tribunal. The 12th ruling is **Management of Hamdard Dawakhana (Waqf), Delhi and D.D. Gupta and other**, 1985 (Vol. 50) F.L. R. 49, in which it is laid down that the Certified Standing Orders apply to the workmen. The 13th ruling is **L. Subba Narasimha Murthy Petitioner V. Bharat Electronics Ltd. and another**, 1982-Lab.I.C.NOC42, in which it is laid down that failure to supply the Enquiry Officer's report does not amount to violation of principles of natural justice. As already mentioned above, he was held in fair and proper manners.

18. In view of the above discussion, it is held that the enquiry was fair and proper. The allegations are mentioned in the charge-sheet copy Ex. M-8 which have been discussed above in details while dealing with the report of the Enquiry Officer Ex. M-21. Even in the written statement, it was pleaded by the respondent company that they would be ready to accommodate him if the claimant promised to work equal to the new employees. The allegations made against the claimant do not justify his dismissal. Under the provisions of Section 11-A of the Industrial Disputes Act, 1947, the Industrial Tribunal can interfere with the quantum of punishment in appropriate cases. The interest of justice would be met in the present case if the claimant is reinstated but is not allowed full back wages for his misconduct. The award is passed accordingly.

Dated the 8th April, 1985.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 302, dated the 9th April, 1985

Forwarded (four cases) to the Commissioner & Secretary to Govt., Haryana, Labour & Employment Departments, Chandigarh as required under Section-15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,*
Industrial Tribunal, Haryana,
Faridabad,